

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6844 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No
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OSMAN AAMADMIYA SAIYED

Versus

COMMISSIONER OF POLICE

Appearance:

MR VIJAY H PATEL for Petitioner
Mr.Nigam Shukla, learned Asst.G.P. for the
respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the order dated 3-5-96 passed by Police Commissioner, Rajkot City detaining the petitioner under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 3-5-96 itself and since then the petitioner is under detention lodged

at Baroda Jail, Baroda.

2. This Special Civil Application was filed in this Court on 4-9-96 and Rule returnable on 4-10-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 3 criminal cases were registered against the petitioner for the offences under the Bombay Prohibition Act and one case at P Nagar Police Station was registered for the offences under IPC including Chapter 16 and 17. Besides these, the detaining authority has taken into consideration the statements made by 3 witnesses on 29-4-96 against the petitioner's anti social activities. The petitioner has been found to be a head strong person and a bootlegger and has been detained as such.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has kept his arguments confined to the question that even if the allegations and materials against the petitioner are taken to be correct on its face value, it can not be said that a case of breach of public order is made out. At the most it is a case of breach of law and order.

5. For the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 it is found that the allegations and materials, on the basis of which the detention order has been passed, do not constitute a case of breach of public order and it is at the most a case of breach of law and order. The detention order, therefore, can not be sustained in the eye of law.

6. Accordingly this Special Civil Application is allowed and the impugned detention order dated 3-5-96 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.